

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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EDWARD CHVALA,

Plaintiff-Appellee,

v

EDWIN BLACKMER, a/k/a EDWIN R.  
BLACKMER,

Defendant,

JAMES R. NODINE,

Intervenor Appellant.

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UNPUBLISHED

January 16, 2001

No. 221317

Oceana Circuit Court

LC No. 99-000793-CH

Before: Wilder, P.J., and Hood and Cavanagh, JJ.

PER CURIAM.

Intervenor defendant appeals by leave granted from an order denying his motion to intervene. We reverse.

On March 1, 1999, plaintiff filed a suit to quiet title to property purchased through a tax sale. Plaintiff named Edwin Blackmer (hereinafter Blackmer) as the sole defendant and owner of the property. On April 2, 1999, intervenor defendant, James R. Nodine, filed a petition to intervene. Intervenor defendant alleged that he had purchased the subject property with Blackmer in 1991, but the deed indicated that Blackmer was the sole purchaser. Intervenor defendant further alleged that, on July 26, 1996, Blackmer had sold his interest in the property to intervenor defendant. Allegedly, an express contract documented the sale, but the contractual parties failed to execute and record a deed to evidence the transaction. Intervenor defendant alleged that Blackmer no longer held an interest in the property, and any interest in the property held by intervenor defendant would not be represented in the action. Intervenor defendant also sought to file a countercomplaint against plaintiff and a crossclaim against Blackmer. Intervenor defendant alleged that the statutory requirements to quiet title had not been satisfied, and Blackmer should be compelled to execute a warranty deed to the property.

On May 10, 1999, a hearing was held regarding the motion to intervene. The trial court did not examine the requirements of MCR 2.209(A)(3), but rather determined that an evidentiary hearing would be held on the issue of inhabitability. That is, the trial court would only address

whether the statutory requirements involving notice of an improved residential dwelling had been satisfied and whether such a dwelling was present on the subject property. The trial court then held that if notice had not been established for a suitable dwelling, the motion for intervention would be granted at that time. The trial court also advised intervenor defendant that any *additional* research involving the issues could be presented in the form of a petition for *rehearing* at the time of the evidentiary hearing. An order reflecting the trial court's decision entered and provided:

IT IS ORDERED that an evidentiary hearing shall be held on June 7, 1999, at 2 p.m., on the issue whether the property was an improved residential parcel on June 18, 1998, which is the date that plaintiff represented, in a Notice to Redeem, that it was not an improved residential parcel. If the court finds at such hearing that the property was an improved residential parcel, on the applicable date, the motion to intervene shall be granted.

IT IS FURTHER ORDERED that intervening party, James R. Nodine, shall have the right to file a motion for rehearing on the other reasons that he argues in support of his motion to intervene.

On June 7, 1999, the date set for the evidentiary hearing, intervenor defendant presented the trial court with a motion for rehearing as the court directed, although this motion contained new allegations that the notice requirements were defective on other grounds, such as failing to notify prior record owners of the property of the tax sale as required by statute. Although the filing complied with the trial court's instructions, the trial court declined to address the issues raised in the motion for rehearing. During the evidentiary hearing, the trial court also declined to admit evidence based on the fact that the hearing was limited to the issue of whether an improved residential parcel existed on the property. When counsel for intervenor defendant inquired when the remaining issues of the case would be addressed, the trial judge responded, "You might never." After hearing testimony from several witnesses, counsel for intervenor defendant sought to recall him to the stand for rebuttal testimony. The trial court refused to hear any testimony because the issue involved a "motion." The trial court also refused counsel's request to preserve the testimony through an offer of proof. The trial judge said, "No, You're all done." The trial court concluded that an improved residential parcel was not involved in the case. The trial court also concluded that intervenor defendant did not have an equitable claim and did not pay any taxes, although this conclusion was contrary to the testimony of intervenor defendant and the clerk, Delores Hasty. The motion to intervene was denied. When advised that a motion for rehearing would be *filed*, the trial court immediately denied the motion without even being advised of the basis for the motion. When advised that the court rules expressly provide for motions for reconsideration, the trial court indicated that it would read the court rules and determine whether the motion would be heard. Ultimately, plaintiff obtained the relief requested in his complaint to quiet title through a default judgment because Blackmer failed to appear and defend the action. We granted intervenor defendant's application for leave to appeal.

Intervenor defendant argues that the trial court erred in conditioning a decision on the motion to intervene on the habitability of the property involved, erred in requiring an evidentiary hearing on the issue without accepting all evidence involved in intervenor defendant's issues, and

denied intervenor defendant due process of law by failing to accept evidence and rendering decisions without all the evidence presented or the opportunity to brief the issues. We agree. MCR 2.209 provides, in relevant part:

**(A) Intervention of Right.** On timely application a person has a right to intervene in an action:

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(3) when the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

The decision to grant or deny a motion to intervene rests in the discretion of the trial court, and we review that decision for an abuse of discretion. *Mahesh v Mills*, 237 Mich App 359, 364-365; 602 NW2d 618 (1999). However, in the present case, the trial court did not expressly rule on the propriety of intervention, but rather correlated any decision on the motion to intervene with a statutory issue involving quiet title as alleged in the initial complaint. The interpretation and application of court rules presents a question of law that is reviewed de novo. *Grzesick v Cepela*, 237 Mich App 554, 559; 603 NW2d 809 (1999). When interpreting the Michigan Court Rules, we apply the rules of statutory construction. *Terra Energy, Ltd v State of Michigan*, 241 Mich App 393, 401; 616 NW2d 691 (2000). The primary rule of statutory construction is to effectuate the intent of the Legislature by considering the purpose of the statute and the object sought to be achieved. *Hopkins v Parole Board*, 237 Mich App 629, 640; 604 NW2d 686 (1999). When the statutory language is plainly expressed, the Legislature intended the meaning articulated, and the statute must be enforced as written. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999).

Review of MCR 2.209(A)(3) reveals that the plainly expressed language promulgated by the Supreme Court provides that three elements are required to intervene by right: timely application, a showing that the representation of the applicant's interests by existing parties is or may be inadequate, and a determination whether disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect his interests. *Oliver v State Police Dep't*, 160 Mich App 107, 115; 408 NW2d 436 (1987). Furthermore, review of the plainly expressed language of the court rule reveals that the intervening applicant need not present documentary evidence with the motion or present proofs at an evidentiary hearing to disprove the allegations in the *initial* complaint. Rather, MCR 2.209(C) sets forth the procedure for seeking intervention. This court rule provides that the person seeking to intervene need only file a motion, give notice to all parties, state the grounds for intervention, and provide a pleading stating the claim or defense for which intervention is sought. There is no requirement that an

evidentiary hearing be held or that documentary evidence be filed to support the motion to intervene.<sup>1</sup>

Furthermore, the trial court erred when it allowed the ultimate issues involved in the initial complaint to impact the requirements of MCR 2.209(A)(3). Plaintiff did not dispute that the timeliness element of MCR 2.209(A)(3) was satisfied. Secondly, intervenor defendant's interests were not adequately represented by Blackmer. Blackmer did not, in any manner, defend the action. Furthermore, it was alleged that Blackmer was not a proper defendant in the action because Blackmer had transferred his interest in the property to intervenor defendant in 1996.<sup>2</sup> Based on the allegations contained within the motion to intervene and oral statements of counsel, the second element of MCR 2.209(A)(3) was satisfied. The last element requires a determination whether disposition of the action impairs or impedes intervenor defendant's ability to protect his interests. Intervenor defendant alleged that he purchased the property with Blackmer and two other individuals. It was further alleged that the interest of the deed holder, Blackmer, was discharged to intervenor defendant in 1996. The interest of the remaining two individuals was to be discharged by intervenor defendant upon the sale of the property. The failure to grant intervenor defendant's motion to intervene caused, under these circumstances, forfeiture of all property interests. Accordingly, the trial court erred in denying intervenor defendant's motion to intervene where the requirements of MCR 2.209(A)(3) were satisfied and erred in relating

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<sup>1</sup> In contrast, MCR 2.116(C)(10) provides that summary disposition may be granted where there are no genuine issues of material fact. MCR 2.116(G)(4) and (G)(5) sets forth the burdens on the respective parties in moving for and opposing summary disposition. A party may not rest on the mere allegations in the pleadings, but must present documentary evidence in support. MCR 2.116(G)(4) and (G)(5). There is no documentary or other evidentiary requirement set forth in MCR 2.209(A). Accordingly, we will not read such a requirement into the court rule when it is not plainly expressed. *Sun Valley, supra*.

<sup>2</sup> The trial court failed to address this allegation at the hearing or otherwise, yet proceeded to allow the default judgment against Blackmer. If Blackmer has transferred the property interest as alleged, it is questionable whether this default judgment is of any consequence, and we cannot reach this issue based on the record on appeal.

intervenor defendant's motion to intervene to the merits of the disposition of the initial complaint.<sup>3</sup>

Reversed.

/s/ Kurtis T. Wilder  
/s/ Harold Hood  
/s/ Mark J. Cavanagh

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<sup>3</sup> We note that MCR 2.209(A)(3) provides that the applicant must claim “an interest relating to the property or transaction which is the subject of the action ...” Plaintiff does not take issue with this allegation in the motion to intervene. In any event, property interests are created and their dimensions defined by existing rules or from independent sources such as state law. *Meagher v Wayne State University*, 222 Mich App 700, 720; 565 NW2d 401 (1997), quoting *Bd of Regents of State Colleges v Roth*, 408 US 564, 577; 92 S Ct 2701; 33 L Ed 2d 548 (1972). Michigan case law recognizes that a property right may come from contract or statute. *Id.* Intervenor defendant alleged that he had acquired all rights to the subject property from Blackmer by written contract. In light of the fact that a deprivation of property rights was alleged, the trial court's constraints on the proofs allowed at the evidentiary hearing are particularly troubling and erroneous.